Supreme Court, U.S.
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IN THE SUPREME COURT
OF THE UNITED STATES

No. 96-1997
October Term, 1996

HENRY ZIMMER,

Petitioner,

v.

DAN NAUMANN, parish council chairperson,
IMMACULATE CONCEPTION CHURCH,

Respondents.

TO PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF MINNESOTA

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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28 pp

QUESTIONS PRESENTED

1. Whether the trial court, at a hearing for a restraining order, abused its discretion by excluding evidence of the code of Canon Law when the evidence was irrelevant and inadmissible because it lacked foundation and it would cause impermissible and unnecessary inquiry into religious matters.

2. Whether the trial court abused its discretion by ruling that the pastor of a church seeking a restraining order had authority to exclude Petitioner from the premises when the pastor was an officer of the parish corporation and the Board of Directors passed a resolution directing the pastor to ban Petitioner from church premises

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents Dan Naumann and Immaculate Conception Church respectfully request that this court deny the petition for writ of certiorari, which seeks review of the Order of the Supreme Court of the State of Minnesota denying review of a decision of the Minnesota Court of Appeals and which seeks review of the decision of the Minnesota Court of Appeals filed January 14, 1997.

OPINIONS AND ORDERS BELOW

The petition for writ of certiorari states that it seeks review of the "judgment" of the Minnesota Supreme Court and that "this opinion affirmed the judgment of the Minnesota Court of Appeals." In response to Petitioner's petition to the Minnesota Supreme Court for further review of the decision of the Minnesota Court of Appeals in the present case, the Minnesota Supreme Court issued an order denying the petition for further review dated March 18, 1997. The Minnesota Supreme Court did not enter a "judgment" nor did it issue an "opinion."

CONSTITUTIONAL PROVISION INVOLVED

Respondents acknowledge that Petitioner has alleged that the First Amendment of the United States Constitution is at issue in this case. However, Respondents contend that this case has been correctly decided by application of the Minnesota

Rules of Evidence and therefore does not involve issues under the First Amendment of the United States Constitution.

STATEMENT OF THE CASE

The Church of the Immaculate Conception ("church") is a small Roman Catholic parish located in a suburb of the Twin Cities in Minnesota. The church is a religious corporation governed by Minnesota Statute Section 315.15.

In April 1990, the pastor of the church, who held the office of Vice-President of the parish corporation, banned Petitioner from the church due to his continued harassment of parish members. Petitioner defied that directive. He was convicted of trespassing in 1991. Petitioner challenged the pastor's authority on behalf of the church as the "lawful possessor" of the church property. That conviction was affirmed by the Minnesota Court of Appeals and the Minnesota Supreme Court. State v. Zimmer, 487 N.W.2d 886 (Minn. 1992). The Minnesota Supreme Court affirmed the trial court's refusal to admit into evidence the code of Canon Law. Id. at 889.

In August 1990, Petitioner sued the church's pastor for claims based upon Canon Law and various other civil claims. The Canon Law claims were dismissed before trial. The remaining claims were tried to a jury. The jury decided against Petitioner on all claims. The Minnesota Court of Appeals affirmed the dismissal of the Canon Law claims and the jury verdict. Zimmer v. Sochacki, Court File No. C0-93-693, 1993 W.L. 377097 (Minn. Ct. App. Sept. 28, 1993) (unpublished opinion). (Respondent's Appendix p. VI).

In 1991 the church obtained a restraining order against Petitioner for a period of two years. Petitioner resumed his harassment of the church after the restraining order expired and the church took steps to ban him again.

In anticipation of Petitioner's claim that under Canon Law the pastor did not have the authority to ban Petitioner from the church, the church obtained approval from Archbishop John R. Roach, Archbishop of St. Paul and Minneapolis. Under Canon Law the Archbishop is an "ordinary" with authority to ban Petitioner.

On January 20, 1995 Archbishop Roach and Father Kevin McDonough, Vicar General of the Archdiocese, executed a proxy resolving that the pastor of the church of the Immaculate Conception be authorized to send a letter to Petitioner in the form attached to the proxy effectively banning Petitioner from church property. (Petitioner's Appendix p. 7a). On January 21, 1995 the Board of Directors of the church adopted a corporate resolution authorizing the church to send the letter to Petitioner. (Petitioner's Appendix p. 7a). The January 20, 1995 letter was signed by the pastor, Father Paul Moudry, and was then hand delivered to Petitioner on January 21, 1995 (Petitioner's Appendix p. 15a-17a). The letter informed Petitioner to stay off church property and advised him that the appropriate church officials were consulted:

> Following the expiration of the restraining order on May 10, 1993, you were advised that you were being permitted to return to parish property. At the time, you were advised that we were hopeful that this would bring the matter to a peaceful, pastoral conclusion by having you in

church for liturgical celebrations rather than having you continue to picket outside of the church. For a number of weeks, the parish leadership has engaged you in discussion and a dialogue in an attempt to persuade you to cease the activities in question. These efforts have been unsuccessful in resolving these matters and you have indicated that you intend to continue your conduct of the past. As you know, this conduct has lead to difficulties including the disruption of events at the church.

It is with reluctance, therefore, that you are advised that effective immediately you are no longer allowed on property of the Church of the Immaculate Conception. If you return to the property or come on to parish property, the appropriate legal authorities will be contacted and charges referred.

This decision to again bar you from parish property was made after consulting with appropriate ecclesiastical officials to ensure that, as possessor of the property, the requisite authority to indefinitely exclude you from the property exists. This decision is unrelated to any ecclesiastical or doctrinal dispute but rather because you have persisted in actions which many find to be intimidating, obstructive and injurious.

(Petitioner's Appendix p. 15a, 16a) (emphasis added).

Petitioner acknowledged at the hearing, and in his written response dated January 29, 1995, that he received Father Moudry's letter on January 21, 1995. In his responsive letter, Petitioner acknowledged that "I have been banned, barred and Excommunicated!" Further, Petitioner acknowledged that "I can only assume that Bishop Roach made this decision to ban me from receiving the sacraments (especially Communion, which means that I am Excommunicated . . . ." (Respondent's Appendix p. IV).

Petitioner plead guilty to three counts of trespass in connection with his actions after being advised to stay off church property. Petitioner acknowledged in his plea petition that he was excluded by Father Moudry from the Church of the Immaculate Conception. (Petition to Enter a Plea of Guilty, Anoka County District Court, Cases K9-96-3988, KO 3992, and K2-96-3993).

Petitioner petitioned the Congregation for the Clergy at the Vatican in Rome, challenging the church's authority to ban him. His petition for recourse was denied. (Respondent's Appendix p. I).

The trial court, after hearing unrefuted evidence that Petitioner repeatedly entered the church after being instructed to stay off the premises, concluded that Petitioner had engaged in a pattern of harassment:

> Mr. Zimmer knows full well what the problem is here. Mr. Zimmer, over a period of a substantial period of time, and I've been involved in this case I think in criminal matters before, I may have done some arraignments, is full well aware of what the Church of the Immaculate

> Conception wants and just refuses to abide in it. It's just that simple. And he's going to--and I suspect that in spite of what has happened here today, he's going to continue to harass the Church of Immaculate Conception. And that's very sad. That's a sad state of affairs, for one man to cos. and cause this much trouble to a Church he claims to be a member of. It's very, very disappointing.

(Respondent's Appendix p. I, II).

REASONS TO DENY THE WRIT

I. The code of Canon Law was properly excluded at the hearing.

The question whether to admit evidence rests within the broad discretion of the trial court and its rulings will not be disturbed unless they constitute an abuse of discretion. Uselman v. Uselman, 464 N.W.2d 130 (Minn. 1990).

In an effort to continue litigating this case Petitioner ignores the most basic evidentiary principles and instead engages in a discussion of Canon Law and Constitutional Law that is unnecessary and without merit.

At the hearing, Petitioner attempted to make an offer of proof with regard to the Canon Law evidence. The offer of proof was deficient because he failed to show what evidence he would have offered. Presumably, as indicated in an affidavit provided at an earlier hearing, Petitioner's Canon Law expert would have testified that under Canon Law only an "ordinary" could ban Petitioner from the church. The church anticipated

this argument. Petitioner's Canon Law expert was unaware that the Diocesan Bishop (Archbishop Roach), who is an "ordinary", had banned Petitioner from the church premises. The Minnesota Court of Appeals recognized that "without this information the evidence proffered by Petitioner's Canon Law expert was without proper foundation and irrelevant." (Petitioner's Appendix p. 7a).

Therefore, the trial court did not abuse its discretion to exclude evidence of Canon Law based upon the Minnesota Rules of Evidence.

Petitioner fails to challenge the ruling that the evidence was irrelevant and without foundation and instead desperately pursues an argument based upon the United States Constitution. That argument is without merit.

The Minnesota Supreme Court, in affirming Petitioner's criminal trespass conviction in 1991, has previously rejected Petitioner's attempts to introduce Canon Law evidence. State v. Zimmer, 487 N.W.2d 886 (Minn. 1992). The Minnesota Court of Appeals in the present case rejected Petitioner's misplaced reliance upon that decision. (Petitioner's Appendix p. 6a).

Even if Petitioner had established relevancy and the proper foundation for admission of the Canon Law evidence, the evidence would have compelled the court to construe and apply unfamiliar Canons that are inherently doctrinal and ecclesiastical in nature. That inquiry could lead to excessive entanglement that is prohibited under the establishment clause. (Petitioner's Appendix p. 7a) (citing Lemon v. Kurtzman, 403 U.S. 602, 612-13, 91 S. Ct. 2105, 2111 (1971)).

Evidence of Canon Law was completely unnecessary in this case because the trial court had before it familiar corporate documents establishing that the Board of Directors of the church had passed a resolution to ban Petitioner. (Petitioner's Appendix p. 7a).

Finally, Petitioner admitted in writing that he was appropriately banned from the church and he exhausted his remedies under Canon Law to challenge that decision. Petitioner petitioned to the Congregation for the Clergy at the Vatican, challenging the decision to ban him from the church. The Congregation for the clergy denied Petitioner's petition for recourse by decree. (Respondent's Appendix p. 1a). That decision cannot be challenged in a civil court. Religious bodies may decide matters of church governance free from state interference. Kedroff v. St. Nicholas Cathedral Russian Orthodox Church, 344 U.S. 94 (1952).

For these reasons the trial court properly exercised its discretion to exclude evidence of Canon Law.

II. The trial court did not abuse its discretion by ruling that the pastor of a church seeking a restraining order had authority to exclude Petitioner from the premises.

The grant of a restraining order is within the trial court's discretion and will not be reversed on appeal absent an abuse of that discretion. Mechtel v. Mechtel, 528 N.W.2d 916, 920 (Minn. App. 1995).

Petitioner has maintained throughout this case that he believed (apparently in "good faith") that the pastor of the church did not have authority to expel him. He continues to make this assertion in spite of his admissions to the contrary. Petitioner plead guilty to criminal trespass charges and acknowledged that the pastor had authority to ban him. After being expelled from the church Petitioner prepared a written response in which he acknowledged "I have been banned, barred and excommunicated!. . ." I can only assume that bishop Roach made this decision to ban me from receiving the sacraments "especially communion, which means that I am Excommunicated. . . ." (Respondent's Appendix p. IV).

Petitioner claims that the trial court should have received evidence of Canon Law and examined the internal governance of the church to decide this issue. At the same time, Petitioner claims that the trial court violated the establishment clause of the First Amendment of the United States Constitution because it determined that the pastor had authority, by virtue of his "office", to exclude Petitioner from the church premises.

Petitioner's claim is incredible in light of the factual background in this matter. In 1991 Petitioner was convicted of trespass against the church. That conviction was based upon the fact that the pastor, as the duly appointed pastor of the parish, had the authority on behalf of the church as the "lawful possessor" of the church property to order him to stay off the property. The Minnesota Supreme Court affirmed the conviction. State v. Zimmer, 487 N.W.2d 886 (Minn. 1992).

The undisputed evidence submitted to the trial court in the present care demonstrated that the pastor of the church is a corporate officer of the parish corporation. As a corporate "person" the church had standing to obtain a harassment restraining order. Dayton Hudson Corp. v. Johnson, 528 N.W.2d 260, 262 (Minn. App. 1995). The trial court properly concluded that the pastor, by virtue of his office, is the lawful possessor of the property and had the right to keep Petitioner off the premises.

Further, the church's Board of Directors adopted a corporate resolution that the pastor should send a letter to Petitioner banning him from church property. That evidence was before the trial court. (Petitioner's Appendix p. 7a). Therefore, Petitioner's argument that the pastor did not have authority is moot. Petitioner does not claim that the Board of Directors of the corporation was without authority to ban him. Contrary to Petitioner's misstatement of the record, the evidence permitted the trial court to make its decision without any consideration whatsoever of Canon Law or church governance.

Therefore, the pastor had authority as an officer of the corporation and as directed by the Board of Directors to exclude Petitioner from church premises and the trial court did not abuse its discretion by issuing a restraining order.

CONCLUSION

For all of the reasons stated above, this court should deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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1993) (unpublished opinion) VI

[50] Sochacki, where I think it's abundantly clear that this Court may not consider canon law in this particular instance. But, more importantly, had this Court decided to review canon law, the evidence that would have been presented would have established that Mr. Zimmer petitioned the congregation for the clergy at the Vatican in Rome and that his petition for recourse was denied. But, be that as it may, the Zimmer v. Sochacki case effectively establishes that Mr. Zimmer has no claim to be on the property, nor is it appropriate to consider canon law. And that's the same as Your Honor ruled. Before we conclude this matter, Your Honor, there is a couple of other things that I would like to bring to the Court's attention whenever you feel is appropriate.

THE COURT: Go ahead.

MR. EISENZIMMER: Your Honor, as we have seen here, I believe that the Respondent has offered no defense here in terms of a defense to the need to bring this proceeding. He clearly indicates that he was told not to be on the property, and the evidence is unrebutted that on at least three occasions since being told that, he had come on the property, inside the Church. For that reason, I believe that this matter has been litigated in bad faith, and I would [51]

. . .

[53] THE COURT: – you're now getting awful close to insulting the Court's intelligence.

Mr. CROSBY: Again, I apologize.

THE COURT: Mr. Zimmer knows full well what the problem is here. Mr. Zimmer, over a period of a substantial period of time, and I've been involved in this case I think in criminal matters before, I may have done some arraignments, is full well aware of what the Church of the Immaculate Conception wants and just refuses to abide in it. It's just that

simple. And he's going to-- and I suspect that in spite of what's happened here today, he's going to continue to harass the Church of the Immaculate Conception. And that's very sad. That's sad state of affairs, for one man to cost and cause this much trouble to a Church he claims to be a member of. It's very, very disappointing. Okay, anything else anybody has?

MR. EISENZIMMER: Nothing, Your Honor.

THE COURT: Petitioners proved their case. The Court's going to issue a harassment restraining order. You, Henry Zimmer, are prohibited, based on the records and proceedings, that there is reasonable grounds to believe you have engaged in harassment by committing the following acts: that you have entered and made uninvited visits after being advised by the [54] person in the lawful possession not to enter onto the premises of the Church of the Immaculate Conception, specifically: that is by Father Moudry, and that you've been advised to stay off, he is a person in lawful possession, that is amply demonstrated in Exhibit 1, I believe Exhibit 1 is a letter signed by I think the pastor, Paul Moudry, and it clearly and unequivocally states and is--it's not capable of a person misinterpreting a statement that says, "It is with reluctance, therefore, you are advised that immediately you are no longer allowed on the property of the Church of the Immaculate Conception. If you return to the property, the appropriate legal authorities will be contacted and charges referred." And it could not be clearer, Mr. Zimmer. It could not be clearer. And you can--and you have in fact yourself in your return letter indicated that you understood full well what the church was saying to you. You've chosen not to abide by it and you attempted to persuade this Court, without any effect, by the way, that you somehow or other didn't think that the Church had the authority and that, if what's been told to me here, you have been told by practically everybody now and you still refuse to abide

by the request or the order [55]

RECORD OF ACTION TAKEN BY THE MEMBERS, OFFICERS, AND BOARD OF DIRECTORS OF THE IMMACULATE CONCEPTION OF COLUMBIA HEIGHTS

At the meeting of the members, officers, and directors of The Church of the Immaculate Conception of Columbia Heights, which was duly held on the 21 day of January, 1995, at Columbia Heights, Minnesota, with all of the members, officers, and directors present either in person or by proxy, the members of the Board of Directors of The Church of the Immaculate Conception of Columbia Heights, a Minnesota religious parish corporation organized and existing pursuant to Minn. Stat. § 315.15, hereby approved and adopted with unanimous consent the attached Corporate Resolution authorizing this corporation to send a written communication to Mr. Henry Zimmer advising him that he is no longer allowed on property of The Church of the Immaculate Conception of Columbia Heights and authorizing this corporation to commence legal proceedings against Mr. Zimmer.

Dated: January 21, 1995. /s/ Paul Moudry, Vice President
Paul Moudry, Vice President

ATTEST:

/s/ Donna Van House
Secretary

EXCOMMUNICATED!!!

On January 21, 1995, I was handed a letter at Immaculate Conception Catholic Church signed by Immaculate Conception Vice President Paul Moudry, which said I could no longer worship at my Church of 25 years. I have been banned, barred, and Excommunicated! And what was my great crime? What did I do that required Immaculate Conception Church to "bar" me from parish property? My great crime was that I carried a cross into Church. Yes, you are reading correctly, I carried a cross into Church. You might then say, "was it a large, obstructive cross." No, it was a small processional cross that every Catholic has seen the alter boy or girl carry in the Church regularly.

I believe this is very unjust. The letter says that "such opprobrious conduct is reprehensible." and that it is Immaculate Conception's "further intent to initiate legal action against you". The letter also states that the decision to bar me "from parish property was made after consulting with appropriate ecclesiastical officials". I can only assume that Bishop Roach made this decision to ban me from receiving the sacraments (especially Communion, which means that I am Excommunicated) in my Church, which is totally contrary to Cannon Law.

So then, I will do what Jesus Christ commanded, and "take up my cross" here at Bishop Roach's church. Here I am with my cross, here I will come to let the all of the Diocese know why I am being barred and Excommunicated from my church. Let us see if Archbishop Roach will openly and publicly lead the way to have me barred from his church. Let us see if this Vicar of Christ will, in a public Court, tell the world that he is now

barring me from the Cathedral "for carrying a cross in church". This is what he will have to do, or here I will come with my cross.

The Church preaches on Justice, while practicing TYRANNY against me!

Thank you for your support,

Henry Zimmer
(A Man Without A Church!)
1-29-95

Update: If you would like to help me stand against this injustice, you can call the Immaculate Conception Pastor at 788-9062. If you would like to help by physically standing with me, please call me 788-7942.

This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (1992)

STATE OF MINNESOTA

IN COURT OF APPEALS

C0-93-693

County Anoka
District Court File #C4907272

Crippen, Judge

Henry Zimmer,

Appellant,

Lawrence H. Crosby
Clem & Crosby
Suite 130
1313 Southeast Fifth Street
Minneapolis, MN 55414

vs.

Walter Sochacki,

Respondent.

John C. Gunderson
Andrew J. Eisenzimmer
Meier, Kennedy & Quinn
2200 North Central Life Tower
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St. Paul, MN 55101-2100

Filed: September 28, 1993
Office of Appellate Courts

Considered and decided by Crippen, Presiding Judge, Randall, Judge, and Harten, Judge.

UNPUBLISHED OPINION

CRIPPEN, Judge.

Appellant Henry Zimmer challenges dismissal of several claims stated against respondent Walter Sochacki and challenges the sufficiency of the evidence to sustain the special verdicts returned against the remaining claims that were tried to a jury. We affirm.

Appellant alleges that respondent, pastor of the Church of the Immaculate Conception, wrongfully excluded him from church property, church business affairs, and parish life, and assaulted and defamed him. The trial court granted motions by respondent to dismiss all of appellant's complaint except those counts alleging assault and defamation. Appellant's allegations of assault and defamation were tried and the jury returned verdicts for respondent.

FACTS

This appeal is part of an ongoing dispute between appellant and respondent concerning religious doctrine and practices at their local church. Appellant has been affiliated for many years with the Church of the Immaculate Conception, a Roman Catholic church in Columbia Heights. Respondent has been the pastor at the church since 1981.

Appellant engaged in numerous demonstrations over a period of years that respondent and parishioners found disruptive and distasteful. Respondent finally decided to bar appellant from the church. On at least two subsequent occasions, appellant attempted to enter church property and was cited by

the police for trespass.[1]

Appellant was never excommunicated from the Roman Catholic Church, nor does the record show that he was unwelcome at any of the other churches within the Archdiocese of Saint Paul and Minneapolis.

DECISION

In reviewing dismissal of all or part of a complaint under Minn. R. Civ. P. 12.02 (e), "the only question [before the reviewing court] is whether the complaint sets forth a legally sufficient claim for relief." Kryzer v. Champlin Am. Legion No. 600, 481 N.W.2d 98, 99-100 (Minn. App. 1992) (quoting Elzie v. Commissioner of Pub. Safety, 298 N.W.2d 29, 32 (Minn 1980)), rev'd on other grounds, 494 N.W.2d 35 (Minn. 1992).

When matters outside the pleadings are presented to support a stated claim, a motion asserting the defense that the pleading fails to state a claim upon which relief can be granted shall be treated as a motion for summary judgment. Minn. R. Civ. P. 12.02; Lloyd F. Smith Company v. Den-Tal-Ez, 478 N.W.2d 510, 513 (Minn. App. 1991), rev'd on other grounds, 491 N.W.2d 11 (Minn. 1992). When reviewing a summary judgment, we must independently determine whether the record shows that there is no genuine issue as to any material fact and

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[1]Ultimately, appellant was convicted of misdemeanor criminal trespass, Minn. Stat. § 609.605 (1) (b) (3), assessed a fine and sentenced to probation. See State v. Zimmer, 478 N.W.2d 764 (Minn. App. 1991), aff'd in part, rev'd in part, 487 N.W.2d 886 (Minn. 1992).

that the moving party was entitled to judgment as a matter of law. Id.; Minn. R. Civ. P. 56.03.

Civil Court Jurisdiction

Civil courts refrain from adjudicating church disputes on both procedural and substantive grounds. As a general procedural rule, civil courts should not intervene in the adjudications of duly constituted church tribunals. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696, 708-09, 96 S. Ct. 2372, 2380 (1976); Piletch v. Deretich, 328 N.W.2d 696, 699 (Minn 1982). Substantive limitations on civil adjudications of church disputes extend to matters of church doctrine or governance, where the nature and effect of the dispute touches upon spiritual as distinguished from secular matters. Trinity Church of Infinite Science v. First Spiritualist Church, 221 Minn. 15, 19, 20 N.W.2d 534, 537 (1945)

Civil courts may intervene in a church dispute where the controversy gives rise to an invasion or violation of any right that civil courts have duty to protect. Protestant Reformed Church v. Templeman, 249 Minn. 182, 190-91, 81 N.W.2d 839, 846-47 (1957). In matters not otherwise barred by procedural or substantive considerations, a civil court may intervene in church disputes as long as it can review the matter in accordance with "neutral principles of law." Piletich, 328 N.W.2d at 702.

Membership, Access, and Governance

Appellant alleges that respondent had no authority to strike his name from the church membership register, thereby placing him in "non practicing status." The record on appeal is devoid of any explanation of the church membership registry or the legal significance of striking a name from that registry. In the absence of any evidence to determine whether the claim is viable, it was properly dismissed.

The trial court also properly dismissed appellant's complaint that respondent improperly excluded him from running for a seat on the church parish council. Appellant's potential influence on the parish council is purely speculative. Moreover, membership on the parish council would have given appellant no vested right to conduct church business. According to the church's own bylaws, the parish council serves in an advisory capacity only. Bylaws of the Church of the Immaculate Conception, Art. VII. The church's board of directors has exclusive authority over the property and contracts of the corporation. Id., Art. XIII.

Appellant states a variety of legal theories to support his complaint that respondent wrongfully excluded him from the church. But the church of the Immaculate Conception is a religious corporation governed by Minn. Stat. § 315.15 (1990). Accordingly, the only legal "members" of this corporation are the five members of the church board of directors, including the diocesan bishop and vicar general, the pastor, and two laypersons. Id. Appellant does not allege that he is a member of the church board of directors and the church corporation. Therefore, appellant has no identified right to demand access to church property.

Appellant argued in his brief, and then again at oral argument, that the legal basis of his claims lay in the canon law of the Roman Catholic Church. Appellant's argument apparently is premised on the notion that respondent constructively excommunicated him without authority to do so. But these claims ate inherently fraught with liturgical or doctrinal questions and are beyond the purview of the civil courts.

Civil Rights Violations

Appellant claims that respondent acted under color of state law to bar him from church, and in so doing deprived him of his civil rights in violation of 42 U.S.C.A. § 1983 (West 1981). See West v. Atkins, 487 U.S. 40, 108 S. Ct. 2250, 2254-55 (1988) (requisite showing of wrongful act by a person acting under color of state law). The record provides no evidence that respondent's conduct had any meaningful nexus with state authority. All respondent did to invoke state authority was ask the police to cite appellant for trespass. He acted with no authority beyond that of every citizen.

Posse Comitatus

Appellant claims that respondent unlawfully used the City of Columbia Heights police force as a posse comitatus to threaten appellant with arrest for trespass. See Sokolw v. County of San Mateo, 213 Cal. App. 3d 231, 238, 201 Cal. Rptr. 520, 523 (1989) (sheriff may call upon an organized group to assist him to maintain the peace of the country) State v. Floyd, 584 A2d 1157, 1166-67 (Conn. 1991). Posse comitatus confers no rights upon non-law enforcement officers and creates no private cause of action in tort.

Special Verdict on Assault

A reviewing court will not set aside answers to special verdict questions "unless they are perverse and palpabl contrary to the evidence or where the evidence is so clear as to leave no room for differences among reasonable people." See Karnes v. Milo Beauty & Barber Supply, 441 N.W.2d 565, 567 (Minn. App. 1989), pet. for rev. denied (Minn. Aug. 15, 1989). The evidence must be viewed in the light most favorable to the jury verdict. Id.

Appellant alleged two separate incidents of assault. Resolving all conflicts in favor of the special verdict, the jury may reasonably have concluded that respondent manifested no intent to inflict harmful of offensive contact on appellant, or that appellant suffered neither physical harm nor any immediate apprehension of harmful or offensive contact at the time of either alleged incident.

Affirmed.

/s/ Gary L. Crippen
September 22, 1993